

1 probation was revoked, and the trial court imposed a presumptive term of imprisonment
2 for 1 year with credit for 18 days time served. (Answer “Ans.”, Ex. A.)

3 On May 24, 2009, while Petitioner was housed in the Arizona Department of
4 Corrections (ADC), Florence, a written disciplinary report in was issued charging
5 Petitioner with violating a verbal directive. (Petition, “Pet.”, Doc. 1.) The report
6 contains a certification by an officer that, on May 26, 2009, it was served on Petitioner
7 for a hearing on the charge before the Disciplinary Hearing Officer. A notation after
8 service indicates “Not Guilty: 2 Witnesses”. (*Id.*)

9 On May 26, 2009, Petitioner and an officer/witness signed an “Inmate
10 Disciplinary Hearing Waiver.” (Ans., Ex. B.) The form indicated that Petitioner
11 waived his right to appear at the hearing, and his right to a 48-hour prior notice: “Based
12 on the I/M’s plea of guilty.” (*Id.*) The hearing, held in absentia, resulted in a finding
13 of guilty based on the plea of guilty. (Ans., Ex. C.)

14 Petitioner appealed his disciplinary charge, asserting a due process violation
15 because he was told that “witnesses are never allowed to testify in person and that I
16 would have to submit written questions to witnesses who would be questioned outside
17 of my presence” in violation of the Due Process and Equal Protection Clauses of the
18 U.S. Constitution. (Pet., Doc. 4.) Petitioner also challenged the adequacy of proof
19 because the hearing officer stated that he based his finding upon a plea of guilty but he
20 never pled guilty. (*Id.*)

21 The appeal’s officer upheld the findings, noting that the report contained
22 adequate evidence to support the charges, that during his preliminary hearing he was
23 offered a chance to enter a plea on the disciplinary charge and Petitioner chose to enter
24 a plea of guilty, and signed a hearing waiver. (Pet., Doc. 5.)

25 In Petitioner’s second appeal, he again argued that he was told that witnesses are
26 never allowed to testify in person, and that he did not plead guilty. (Pet., Doc. 6.) The
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1 appeal was denied, the decision noting that “[i]n two places on two separate forms
2 [Cooper] signed ‘guilty’ pleas.” (Pet., Doc. 7.)

3 Cooper received a disciplinary penalty that included 30 days in Parole Class III,
4 which is an inmate class that does not allow earned release credits (ERC) pursuant to
5 A.R.S. § 41-1604.06 and -1604.07(A), precluding him from earning 5 days of ERCs.
6 (Pet. Doc. 3, 8 at 10.) Petitioner asserts that he lost his Temporary Release date of
7 August 22, 2009, and lost five good time credits, bringing his release date to November
8 12, 2009. (Pet., at 6.)

9 B. Special Action

10 Petitioner sought special action relief in Pinal County superior court. (Pet. Doc.
11 8.) His special action petition alleged that he was denied due process since he was not
12 allowed to have witnesses physically present to question them at his hearing, and
13 because his plea was changed to guilty at the hearing without his knowledge. (*Id.*, at
14 11-12.) Petitioner also raised an equal protection claim, asserting that Petitioner was
15 treated differently from other similarly situated prisoners. (*Id.*, at 12.)

16 On June 15, 2009, the trial court denied deferral or waiver of court fees and costs
17 “per the judges orders.” (Pet., Doc. 9.) On June 29, Petitioner filed a petition for
18 special action in the Arizona Court of Appeals, urging the same due process violation
19 and equal protection arguments, and additionally, arguing that the trial court’s denial
20 of a fee waiver violated the constitution. (Pet., Doc. 10, at 1-2.) The court of appeals
21 declined to accept jurisdiction. (Pet., Doc. 11.)

22 C. Federal Habeas

23 Petitioner raises four grounds for relief. In Ground One, he claims he was denied
24 his Fourteenth Amendment due process rights because he was not permitted to question
25 witnesses except by written questions that would be asked outside Petitioner’s presence
26 and would be incorporated into reports, he refused to partake in a hearing that did not
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1 permit him to questions his witnesses, and he was found guilty based on a plea of guilty
2 “even though he never pled guilty.”

3 In Ground Two, Petitioner alleges his due process rights were violated because
4 the hearing officer changed Petitioner’s plea from “not guilty” to “guilty” without
5 Petitioner’s knowledge and then based his decision solely on the change of plea.

6 In Ground Three, Petitioner asserts a violation of his Fourteenth Amendment
7 equal protection rights because the hearing officer, by changing Petitioner’s plea
8 without Petitioner’s knowledge, treated Petitioner differently than other similarly
9 situated prisoners for “reasons that are arbitrary, capricious, and serve no l[e]gitimate
10 governmental purpose.”

11 In Ground Four, Petitioner alleges he was denied his Fourteenth Amendment due
12 process rights because he was found guilty based on a Departmental Order that was
13 “vague as applied.”

14 Petitioner asserts that he presented all four grounds to the Arizona Court of
15 Appeals in a special action petition.

16 D. Release

17 Although Petitioner asserted in his Petition that the constitutional violations at
18 issue in this habeas would result in a release date of November 12, 2009, a review of
19 the claim suggests that Petitioner’s claim was that he would lose five day’s of earned
20 release credit, and that his temporary release date, prior to the violation, had been
21 August 22, 2009. This suggested to the Court that, on the day after the Court
22 anticipated Petitioner’s response, Petitioner would be released, pursuant to the terms
23 of his sentence upon probation revocation, to a consecutive sentence of community
24 supervision, on August 27, 2009. This Court in fact found, through ADC’s online
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1 Inmate Database¹, and confirmed by contacting ADC's public access information, that
2 Petitioner had been released on supervision on August 26, 2009.

3 **II. DISCUSSION**

4 A. Standard of Review

5 Because Petitioner filed his petition after April 24, 1996, this case is governed
6 by the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. § 2254(d)
7 ("AEDPA").

8 B. Statute of Limitations

9 A one year period of limitation shall apply to an application for writ of habeas
10 corpus by a person in custody pursuant to the judgment of a State court. 28 U.S.C. §
11 2244(d)(1). Based on a review of the record, the Court finds that the petition is timely
12 under 28 U.S.C. § 2244(d)(1)(A).

13 C. Case and Controversy

14 A case becomes moot when "it no longer present[s] a case or controversy under
15 Article III, § 2, of the Constitution." *Spencer v. Kemna*, 523 U.S. 1, 7 (1998). In order
16 to satisfy the case-or-controversy requirement, the parties must have a personal stake
17 in the outcome of the suit throughout "all stages of federal judicial proceedings." *United*
18 *States v. Verdin*, 243 F.3d 1174, 1177 (9th Cir.) (2001). Even though Petitioner is still
19 serving the community supervision portion of his sentence, the imprisonment sentence
20 has been completed. Community supervision is not equivalent to imprisonment. *See*
21 *State v. Cowles*, 207 Ariz. 8 (App. 2004).

22 An exception to the general rule that a challenge to a prison sentence becomes
23 moot once the sentence has been served is the collateral consequence exception, which
24 allows the defendant to challenge a completed prison sentence if he suffers collateral
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26 ¹ Arizona Department of Corrections Inmate Datasearch,
27 http://www.azcorrections.gov/inmate_datasearch/Index_Minh.aspx.

1 consequences. *United States v. Palomba*, 182 F.3d 1121, 1123 (9th Cir. 1999). While
2 these “collateral consequences” may flow from any conviction, and thus a petition
3 challenging a conviction is not usually rendered moot by a release from custody, *see*
4 *Hirabayashi v. United States*, 828 F.2d 591, 606 (9th Cir. 1987), Petitioner in this case
5 is not challenging his conviction, but a prison disciplinary proceeding. The
6 presumption of collateral consequences does not apply to prison disciplinary
7 proceedings. *Wilson v. Terhune*, 319 F.3d 477 (9th Cir. 2003). Petitioner has not
8 asserted that any collateral consequences would be remedied if this Court now finds that
9 he was denied five days of earned release credits in violation of Federal law. Assuming
10 he had been released earlier, it would not have affected his term of community
11 supervision. *Cowles*, 207 Ariz. at 10.

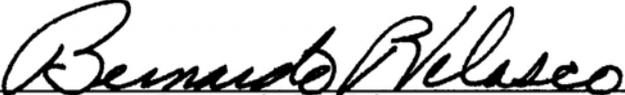
12 Because Petitioner is not challenging his conviction and has been released from
13 his term of imprisonment, there is no presumption of collateral consequences. Neither
14 has Petitioner alleged, or does the Court find, any collateral consequences from the
15 alleged violations raised in this habeas been alleged by Petitioner, nor does the Court,
16 upon review of the record find any collateral consequences that would entitle Petitioner
17 to relief. Thus, the present Petition is moot.

18 **III. RECOMMENDATION**

19 This Court recommends that the Petition for Writ of Habeas Corpus (Doc. No.
20 1) be DENIED.

21 Pursuant to 28 U.S.C. §636(b), any party may serve and file written objections
22 within ten days after being served with a copy of this Report and Recommendation. A
23 party may respond to another party's objections within ten days after being served with
24 a copy thereof. Fed.R.Civ.P. 72(b). If objections are filed the parties should use the
25 following case number: **CIV 09-0383-TUC-RCC**.

26 DATED this 28th day of August, 2009.

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Bernardo P. Velasco
United States Magistrate Judge